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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/916,609	07/26/2001	William Alexander McEwan	NA11P017/01.062.01	8706
28875	7590	10/19/2005	EXAMINER	
Zilka-Kotab, PC P.O. BOX 721120 SAN JOSE, CA 95172-1120			INGBERG, TODD D	
			ART UNIT	PAPER NUMBER
			2193	
DATE MAILED: 10/19/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/916,609

Applicant(s)

MCEWAN, WILLIAM ALEXANDER

Examiner

Todd Ingberg

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/2/2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 and 27-35 is/are pending in the application.
- 4a) Of the above claim(s) 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 and 27-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 7/26/2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claims 1 – 25 and 27 - 35 have been examined.

Claims 32 – 25 have been added.

Claim 26 have been canceled.

Claims 1, 27, 28 and 30 have been amended.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 35 rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: “compared for what?”.

Claim 35

The method as recited in claim 32, wherein results of the operations during the execution of the full-release scanner update and the pre-release scanner update are compared.

Examiner's Response

The updates can be compared to many things. The claim does not state they need to be compared to each other. The can be compared to a wide variety of items such as a error code, parity error test, checksum test or a file size test. The limitations is too indefinite to determine the scope of the claim limitations present.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 – 21 and 27 – 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Norton AntiVirus Corporate Edition version 7.0. released 1999 (Called **Norton**).

Claim 1

A method for testing scanner updates executing on a computer readable medium, comprising:

- (a) distributing a full-release scanner update from a server to a plurality of computers utilizing a network;
- (b) distributing a pre-release scanner update from the server to the computers utilizing the network;
- (c) executing the full-release scanner update on the computers for security scanning;
- (d) executing the pre-release scanner update on the computers for testing purposes; and
- (e) transmitting results of the testing from the computers to the server utilizing the network; and
- (f) utilizing the results to modify the pre-release scanner update before releasing the pre-release scanner update as a full release scanner update.**

Examiner's Response

Norton also discloses Symantec AntiVirus Research Center (SARC). A Center where viruses are tracked, identified and analyzed and new anti virus technology is developed (Norton, page 8). Over 40,000 known virus definitions are on file. Realtime Protection constantly monitors activity on your computer by looking for virus signatures (Norton, page 8). LiveUpdate provides downloads of new antivirus protection to computers (Norton, page 8) regularly by automatically connecting to the special Symantec site and determining if your files need updating, downloads the proper files and installs them in the proper location (Norton, page 8). Cures are also sent via email (Norton, page 9). A Managed Solution is detailed in Chapter 2. A Quarantine Server for virus infected files, copies of infected items are forward to the Quarantine on the client machine to the central Quarantine (Norton, page 11). Quarantine tests and confirms new updates and the updates are rolled out to client machines (Norton, page 12). Client machines upon receiving the update perform selected preset operations, such as repair the infected item and releasing it from the client Quarantine automatically (Norton, 12). Additional details, on topics such as, SARC is available on page 19, LiveUpdate page 20, Quarantine pages 29 to 33. The reference must be taken as a whole.

Note: Applicant has moved the limitations of canceled claim 26 to some of the independent claims. The limitations do not distinguish the claimed invention. From the originally cited section, "Quarantine tests and confirms new updates and the updates are rolled out to client machines (Norton, page 12)." Applicant appears not to believe Norton tests bug fixes and based on the results updates before releasing pre-release scanner updates.

In view of the maintaining of the original grounds of rejection. When taking the reference as a whole the Applicant should also review the interaction through email (Norton, pages 31 - 33).

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Claim 2

The method as recited in claim 1, wherein the full-release scanner update and the pre-release scanner update are distributed simultaneously.

Examiner's Response

LiveUpdate provides downloads of new antivirus protection to computers (Norton, page 8) regularly by automatically connecting to the special Symantec site and determining if your files need updating, downloads the proper files and installs them in the proper location (Norton, page 8).

Claim 3

The method as recited in claim 1, wherein the full-release scanner update and the pre-release scanner update are distributed together.

Examiner's Response

Examiner see no difference between the claim limitations of claim 2 and claim 3. If the update has both update and a pre-release then they are simultaneously distributed together.

See the rejection for claim 2.

Claim 4

The method as recited in claim 1, wherein the pre-release scanner update is distributed on a periodic basis.

Examiner's Response

As update date distributed signatures and coinciding with scheduled updates (Norton, pages 11 – 13) and covered in claim 1.

Claim 5

The method as recited in claim 1, wherein the pre-release scanner update is distributed with virus signatures.

Examiner's Response

Norton, page 7 last paragraph. (signatures numerous reference points in Norton document).

Claim 6

The method as recited in claim 1, and further comprising automatically determining whether a pre-release scanner update exists, and conditionally distributing the pre-release scanner update from the server if the pre-release scanner update exists.

Examiner's Response

LiveUpdate provides downloads of new antivirus protection to computers (Norton, page 8) regularly by automatically connecting to the special Symantec site and determining if your files need updating, downloads the proper files and installs them in the proper location (Norton, page 8).

Claim 7

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The method as recited in claim 1, wherein the pre-release scanner update is executed when the computers are idle.

Examiner's Response

One interpretation in view of the present limitations is that the user schedules scans of viruses at a time the machine will not be used. (Norton, page 25, scheduling scans and page 23 run unattended)

Claim 8

The method as recited in claim 1, wherein the pre-release scanner update is executed automatically when the computers are idle.

Examiner's Response

One interpretation in view of the present limitations is that the user schedules scans of viruses at a time the machine will not be used. (Norton, page 25, scheduling scans and page 23 run unattended)

Claim 9

The method as recited in claim 1, wherein the results are transmitted to a quality assurance administrator.

Examiner's Response

Norton's Symantec AntiVirus Research Center (SARC) pages 8 – 9.

Claim 10

The method as recited in claim 1, and further comprising comparing results of the execution of the full-release scanner update and the pre-release scanner update.

Examiner's Response

As per claim 1 the development of new antivirus protection and the distribution of such updates.

Claim 32

The method as recited in claim 1, further comprising recording operations of the full-release scanner update during the execution of the full-release scanner update.

Examiner's Response

Norton (page 18, Histories).

Claim 11

The method as recited in claim 10, wherein the comparison occurs on the computers.

Examiner's Response

Norton (pages 12 – 13 and 24 - 25 , virus scan)

Claim 12

The method as recited in claim 11, and further comprising transmitting results of the comparison from the computers to the server utilizing the network.

Examiner's Response

Norton, pages 29 – 32, Quarantine, Submitting a potential infected file to SARC for analysis)

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Claim 13

The method as recited in claim 1, wherein the network includes the Internet.

Examiner's Response

Norton, page 15, Internet

Claim 14

The method as recited in claim 10, and further comprising determining whether a virus is detected by the execution of the pre-release scanner update and not the full-release scanner update based on the comparison.

Examiner's Response

Claim 1 mentioned the collection of over 40,000 known virus signatures. And a reporting mechanism to the Central operation and page 18, Virus definition file information

Claim 15

The method as recited in claim 14, and further comprising removing the virus.

Examiner's Response

Norton, page 29, To act on an infected file, bullet 2.

Claim 16

The method as recited in claim 14, and further comprising storing a record of the virus.

Examiner's Response

Norton, page 29, To act on an infected file, bullet 4.

Claim 17

The method as recited in claim 14, and further comprising reporting the virus.

Examiner's Response

Norton, page 29, To act on an infected file, Note – if set to display alert operator is notified.

Claim 18

The method as recited in claim 1, and further comprising detecting faults associated with the execution of the pre-release scanner update.

Examiner's Response

Norton, page 29, To act on an infected file, bullet 1. The unsuccessful run of a new signature is still a detectable state. If the same conditions exist that caused the virus to be detected the virus can be detected if not corrected. The scan of claims above that is able to done on demand or schedules (Norton, pages 23 – 28).

Claim 19

The method as recited in claim 18, and further comprising transmitting a record of the faults from the computers to the server utilizing the network.

Examiner's Response

Norton, page 29, To act on an infected file, bullet 1. The unsuccessful run of a new signature is still a detectable state. If the same conditions exist that caused the virus to be detected the virus

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can be detected if not corrected. The scan of claims above that is able to be done on demand or schedules (Norton, pages 23 – 28).

Claim 20

The method as recited in claim 18, and further comprising ceasing the execution of the pre-release scanner update on the computers in response to the detection of the faults.

Examiner's Response

Norton, page 22, Turn off protection (temporarily). Can be user who turns it off based on present claim limitations.

Claim 21

The method as recited in claim 20, and further comprising re-executing the pre-release scanner update on the computers after ceasing the execution.

Examiner's Response

Norton, page 22, Turning back on the file protection so realtime file protection can run.

Claim 27

A computer program product for testing scanner updates executing on a computer readable medium, comprising:

- (a) computer code for distributing a full-release scanner update from a server to a plurality of computers utilizing a network;
- (b) computer code for distributing a pre-release scanner update from the server to the computers utilizing the network;
- (c) computer code for executing the full-release scanner update on the computers for security scanning;
- (d) computer code for executing the pre-release scanner update on the computers for testing purposes; and
- (e) computer code for transmitting results of the testing from the computers to the server utilizing the network; and

(f) computer code for utilizing the results to modify the pre-release scanner update before releasing the pre-release scanner update as a full release scanner update.

Examiner's Response

The limitations of this claim have been covered in the rejections above (see claim 1).

Claim 28

A system for testing scanner updates executing on a computer readable medium, comprising:

- (a) logic for distributing a full-release scanner update from a server to a plurality of computers utilizing a network;
- (b) logic for distributing a pre-release scanner update from the server to the computers utilizing the network;
- (c) logic for executing the full-release scanner update on the computers for security scanning;
- (d) logic for executing the pre-release scanner update on the computers for testing purposes; and
- (e) logic for transmitting results of the testing from the computers to the server utilizing the network; and

(f) logic for utilizing the results to modify the pre-release scanner update before releasing the pre-release scanner update as a full release scanner update.

Examiner's Response

The limitations of this claim have been covered in the rejections above (see claim 1).

Claim 29

A server-based method for testing scanner updates executing on a computer readable medium, comprising:

- (a) distributing a full-release scanner update from a server to a plurality of computers utilizing a network;
- (b) distributing a pre-release scanner update from the server to the computers utilizing the network;
- (c) receiving results of the execution of the full-release scanner update and the pre-release scanner update from the computers;
- (d) modifying the pre-release scanner update before releasing the pre-release scanner update as a full-release scanner update based on the results.

Examiner's Response

The limitations of this claim have been covered in the rejections above.

Claim 30

A client-based method for testing scanner updates executing on a computer readable medium, comprising:

- (a) receiving from a server a full-release scanner update at a computer utilizing a network;
- (b) receiving from the server a pre-release scanner update at the computer utilizing the network;
- (c) executing the full-release scanner update on the computer for security scanning;
- (d) executing the pre-release scanner update on the computer for testing purposes; and
- (e) transmitting results of the testing from the computer to the server utilizing the network; and
- (f) utilizing the results to modify the pre-release scanner update before releasing the pre-release scanner update as a full release scanner update.**

Examiner's Response

The limitations of this claim have been covered in the rejections above (see claim 1)..

Claim 31

A method for testing scanner updates executing on a computer readable medium, comprising:

- (a) distributing a full-release scanner update from a server to a plurality of computers utilizing a network;
- (b) distributing a pre-release scanner update from the server to the computers simultaneously with the full-release update utilizing the network;
- (c) executing the full-release scanner update on the computers for security scanning;
- (d) determining whether the computers are idle;
- (e) automatically executing the pre-release scanner update on the computers for testing purposes upon the computers being determined to be idle;
- (f) comparing results of the execution of the full-release scanner update and the pre-release scanner update;

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- (g) determining whether a virus is detected by the execution of the pre-release scanner update and not by the full-release scanner update based on the comparison;
- (h) storing a record of the detected virus;
- (i) removing the detected virus;
- (j) detecting faults associated with the execution of the pre-release scanner update;
- (k) ceasing the execution of the pre-release scanner update on the computers in response to the detection of at least one fault;
- (l) re-executing the pre-release scanner update on the computers after ceasing the execution;
- (m) counting a number of the faults;
- (n) conditionally re-executing the pre-release scanner update on the computers if the number exceeds a predetermined number within a predetermined amount of time;
- (o) storing a record of the faults;
- (p) transmitting results relating to the viruses and faults from the computers to the server utilizing the network; and
- (q) modifying the pre-release scanner update at the server before releasing the pre-release scanner update as a full-release scanner update based on the results.

Examiner's Response

The limitations of this claim have been covered in the rejections above.

Claim 33

The method as recited in claim 32, wherein the recorded operations are performed by the pre-release scanner update during the execution of the pre release scanner update.

Examiner's Response

Norton, page 18, Scan History.

Claim 34

The method as recited in claim 32, wherein the operations are recorded in a queue.

Examiner's Response

Norton, page 18, Event Log.

Claim 35

The method as recited in claim 32, wherein results of the operations during the execution of the full-release scanner update and the pre-release scanner update are compared.

Examiner's Response

See 112 Rejection above – Too indefinite to determine scope of claim.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 22, 23, 24 and 25 are rejected by over Norton AntiVirus Corporate Edition version 7.0. released 1999 (Called **Norton**) in view Norton Utility AntiVirus for Netware version 2, User's Guide published 1996 (Called **Norton2**).

Norton teaches the download of virus scan software and the communicating between users and SARC but fails to explicitly teach the recording of the duration of execution time. It is Norton 2 who teaches the recording of the duration of execution (Norton2, page provide Activity log options and transmission to server – top of page). Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to combine Norton with Norton2 because capturing the status of error messages(Same page) and duration time to run software and transmit it for analysis, makes software more reliable.

Claim 22

The method as recited in claim 18, and further comprising counting a number of the faults, and conditionally terminating the pre-release scanner update on the computers based on the number.

Examiner's Response

Rejection above

Claim 23

The method as recited in claim 22, wherein the faults include at least one of delays, failures, crashes, and false alarms.

Examiner's Response

Rejection above

Claim 24

The method as recited in claim 1, and further comprising detecting a duration of the execution of the pre-release scanner update.

Examiner's Response

Rejection above

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Claim 25

The method as recited in claim 24, and further comprising transmitting a record of the duration from the computers to the server utilizing the network.

Examiner's Response

Rejection above

Response to Arguments

7. Applicant's arguments filed August 2, 2005 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

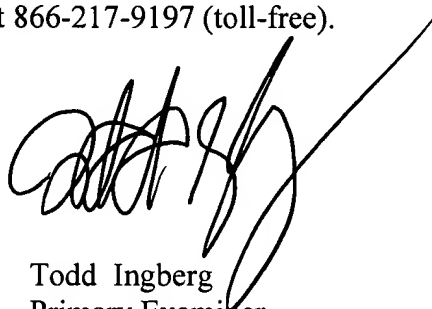
Correspondence

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd Ingberg whose telephone number is (571) 272-3723. The examiner can normally be reached on during the work week..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on (571) 272-3719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Todd Ingberg', with a long, sweeping horizontal line extending to the right.

Todd Ingberg
Primary Examiner
Art Unit 2193

TI